

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**1:04-cv-05101-HB
ECF Case**

**TRAVELERS CASUALTY AND
SURETY COMPANY as Administrator
for RELIANCE INSURANCE
COMPANY,**

Plaintiff,

vs.

**THE DORMITORY AUTHORITY OF
THE STATE OF NEW YORK, TDX
CONSTRUCTION CORP. and KOHN,
PETERSON, FOX & ASSOCIATES, P.C.,**

Defendants.

**DORMITORY AUTHORITY OF THE
STATE OF NEW YORK,**

Third-Party Plaintiff,

vs.

**TRATAROS CONSTRUCTION, INC.
and TRAVELERS CASUALTY AND
SURETY COMPANY,**

Third-Party Defendants.

**TRATAROS CONSTRUCTION, INC.
and TRAVELERS CASUALTY AND
SURETY COMPANY,**

Fourth-Party Plaintiffs,

vs.

**G.M. CROCETTI, INC., CAROLINA
CASUALTY INSURANCE COMPANY,
BARTEC INDUSTRIES INC., DAYTON
SUPERIOR SPECIALTY CHEMICAL
CORP., SPECIALTY CONSTRUCTION
BRANDS, INC. t/a TEC, KEMPER
CASUALTY INSURANCE COMPANY
d/b/a KEMPER INSURANCE**

**COMPANY, GREAT AMERICAN
INSURANCE COMPANY, NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA., UNITED
STATES FIRE INSURANCE
COMPANY, ALLIED WORLD
ASSURANCE COMPANY
(U.S.) INC. f/k/a COMMERCIAL
UNDERWRITERS INSURANCE
COMPANY, ZURICH
AMERICAN INSURANCE COMPANY
d/b/a ZURICH INSURANCE
COMPANY, OHIO CASUALTY
INSURANCE COMPANY
d/b/a OHIO CASUALTY GROUP,
HARLEYSVILLE MUTUAL
INSURANCE COMPANY
(a/k/a HARLEYSVILLE
INSURANCE COMPANY, an insurer
for BARTEC INDUSTRIES INC.),
JOHN DOES 1-20, and XYZ
CORPS. 1-12,**

Fourth Party Defendants.

**NATIONAL UNION'S ANSWER TO THE FOURTH-PARTY COMPLAINT,
AFFIRMATIVE DEFENSES, JURY DEMAND
AND ANSWER TO CROSS-CLAIMS**

Fourth-Party Defendant National Union Fire Insurance Company of Pittsburgh,
PA ("National Union"), as and for its answer to the Amended Fourth-Party Complaint
(the "Fourth-Party Complaint"):

1. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations in paragraph "1."
2. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations in paragraph "2."
3. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations in paragraph "3."

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "4."
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "5."
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "6."
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "7."
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "8."
9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "9."
10. Admits the allegations set forth in paragraph "10."
11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "11."
12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "12."
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "13."
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "14."
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "15."

16. Paragraph "16" of the Fourth Party Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, National Union denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "16."

17. Paragraph "17" of the Fourth Party Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "17."

18. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "18."

19. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "19."

20. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "20."

21. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "21."

22. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "22."

23. Refers the Court to referenced pleading for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "23."

24. Refers the Court to the ad damnum filed by the Dormitory Authority of the State of New York, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "24."

25. Refers the Court to referenced subcontract for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "25."

26. Refers the Court to referenced bonds for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "26."

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "27."

28. Refers the Court to referenced contract for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "28."

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "29."

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "30."

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "31."

FIRST COUNT

32. In response to the allegations set forth in paragraph “32,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “32” of the Fourth-Party Complaint as if more fully set forth herein.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “33.”

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “34.”

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “35.”

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “36.”

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “37.”

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “38.”

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “39.”

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “40.”

SECOND COUNT

41. In response to the allegations set forth in paragraph “41,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “40” of the Fourth Party Complaint as if more fully set forth herein.

42. Refers the Court to the referenced bond for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “42.”

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “43.”

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “44.”

THIRD COUNT

45. In response to the allegations set forth in paragraph “45,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “44” of the Fourth Party Complaint as if more fully set forth herein.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “46.”

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “47.”

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “48.”

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “49.”

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “50.”

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “51.”

FOURTH COUNT

52. In response to the allegations set forth in paragraph “52,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “51” of the Fourth Party Complaint as if more fully set forth herein.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “53.”

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “54.”

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “55.”

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “56.”

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “57.”

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “58.”

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “59.”

FIFTH COUNT

60. In response to the allegations set forth in paragraph “60,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “59” of the Fourth Party Complaint as if more fully set forth herein.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “61.”

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “62.”

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “63.”

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “64.”

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “65.”

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “66.”

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “67.”

SIXTH COUNT

68. In response to paragraph “68,” repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “67” of the Fourth Party Complaint as if more fully set forth herein.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “69.”

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “71.”

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “71.”

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “72.”

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “73.”

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “74.”

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “75.”

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “76.”

SEVENTH COUNT

77. In response to paragraph “77” of the Fourth-Party Complaint, repeats and realleges National Union’s response to each and every allegation set forth in paragraphs “1” through “76” above as if more fully set forth herein.

78. Admits that National Union issued one or more policies of umbrella liability insurance (the “National Union Policies”) to Trataros Construction, refers the Court to the National Union Policies for the particulars thereof, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “78.”

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “79.”

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “80.”

81. Denies the allegations set forth in paragraph “81” as to National Union and/or the National Union Policies.

82. Denies the allegations set forth in paragraph “82” as to National Union and/or the National Union Policies.

83. Denies the allegations set forth in paragraph “83” as to National Union and/or the National Union Policies.

84. Denies that Fourth-Party Plaintiffs are entitled to any relief, declaratory or otherwise, as respects National Union or the National Union Policies, and otherwise denies knowledge or information sufficient to form a belief as to what these entities “request” or the truth of the remaining allegations in paragraph “84.”

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST DEFENSE

The Fourth Party Complaint fails to state a claim upon which relief may be granted against National Union.

AS AND FOR A SECOND DEFENSE

The Fourth Party Complaint fails to present a justiciable controversy as to National Union.

AS AND FOR A THIRD DEFENSE

No coverage is available under the National Union Policies unless and until Fourth-Party Plaintiffs demonstrate proper exhaustion of all applicable underlying insurance and/or retentions, a condition precedent to coverage under the National Union Policies.

AS AND FOR A FOURTH DEFENSE

The National Union Policies requires that all Scheduled Underlying Insurance be maintained in full force and effect; to the extent this condition is not complied with, National Union's obligations under the National Union Policies, if any, can be no greater than those which would exist had these this condition been complied with.

AS AND FOR A FIFTH DEFENSE

Fourth Party Plaintiffs' claims may be barred may be barred in whole or in part by the terms, conditions, exclusions and limitations of the National Union Policies.

AS AND FOR A SIXTH DEFENSE

Fourth Party Plaintiffs' claims may be barred in whole or in part by their failure to mitigate, minimize or avoid the alleged injuries for which they are answerable.

AS AND FOR A SEVENTH DEFENSE

Fourth Party Plaintiffs' claims may be barred in whole or in part by any failure to provide National Union with timely and proper notice of an occurrence, claim or suit, as per the National Union Policies.

AS AND FOR AN EIGHTH DEFENSE

Fourth Party Plaintiffs' claims may be barred in whole or in part by the doctrine of unclean hands.

AS AND FOR A NINTH DEFENSE

Fourth Party Plaintiffs' claims may be barred in whole or in part by any impairment of National Union's right to subrogation, indemnity or contribution.

AS AND FOR A TENTH DEFENSE

Fourth Party Plaintiffs' claims may be barred in whole or in part by the applicable statute of limitations, by estoppel, and/or through laches.

AS AND FOR AN ELEVENTH DEFENSE

National Union may be entitled to assert any applicable terms, conditions, exclusions and other language of underlying insurance policies in response to the claims at issue.

AS AND FOR A TWELFTH DEFENSE

National Union's obligations, if any, under the National Union Policies are subject to the applicable limits of liability set forth therein.

AS AND FOR A THIRTEENTH DEFENSE

The National Union Policies are not obligated to "drop down" and/or assume the obligations of an insured and/or other insurers as to underlying insurance.

AS AND FOR A FOURTEENTH DEFENSE

Coverage under the National Union Policies is limited to, *inter alia*, claims for damages arising from “Property Damage” caused by an “Occurrence,” which is defined as “an accident.”

AS AND FOR A FIFTEENTH DEFENSE

Any “Property Damage” which was “expected or intended from the standpoint of the insured” is excluded under the National Union Policies.

AS AND FOR A SIXTEENTH DEFENSE

National Union’s obligations under the National Union Policy are excess to any other policy of insurance providing coverage for damages covered in whole or in part by the National Union Policies, other than insurance written specifically as excess to the National Union Policies.

AS AND FOR A SEVENTEENTH DEFENSE

No coverage is available under the National Union Policies\y for any “bodily injury” arising out of any project insured under a “wrap-up” or similar rating plan.

AS AND FOR AN EIGHTEENTH DEFENSE

No coverage is available under the National Union Policy to any natural person or entity not an insured thereunder.

AS AND FOR A NINETEENTH DEFENSE

No coverage may be available under the National Union Policies for property damage arising out of any project insured under a “wrap-up” or any similar rating plan.

AS AND FOR A TWENTIETH DEFENSE

No coverage is available under the National Union Policies for any liability arising from an insured's breach of a contract to provide insurance for another natural person or entity and/or any failure to name such a person or entity as an insured to an insurance policy.

AS AND FOR A TWENTY-FIRST DEFENSE

No coverage is available under the National Union Policies for damage to "Impaired Property," as that term is defined therein.

AS AND FOR A TWENTY-SECOND DEFENSE

No coverage is available under the National Union Policies for damage to an insured's "Work" which is included in the "Products-Completed Operations Hazard," as those terms are defined therein.

AS AND FOR A TWENTY-THIRD DEFENSE

No coverage is available under the National Union Policies for damage to an insured's "Product," as that term is defined therein.

AS AND FOR A TWENTY-FOURTH DEFENSE

No coverage is available under the National Union Policies for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal and/or disposal of an Insured's "Product" or "Work" or "Impaired Property," as those terms are defined therein, if such product, work or property is withdrawn from use because of a known or suspected deficiency, defect, or inadequacy with respect thereto.

AS AND FOR A TWENTY-FIFTH DEFENSE

No coverage may be available under the National Union Policies for property damage to property being installed, erected or worked upon by an insured, or its agents or subcontractors.

AS AND FOR A TWENTY-SIXTH DEFENSE

No coverage may be available under the National Union Policies for property damage arising out of any professional services rendered by or on behalf of an insured.

AS AND FOR A TWENTY-SEVENTH DEFENSE

National Union may have additional defenses that cannot be articulated due to the generality of the Fourth Party Complaint, Fourth Party Plaintiffs' failure to meet their obligation to provide information about the underlying actions or claims, the absence of insuring documents, or the stage of this litigation. Accordingly, National Union reserves its right to supplement the foregoing and to assert additional defenses as may appear after Fourth Party Plaintiffs particularize their claims, and after discovery of information concerning the matters set forth in the Fourth Party Complaint.

ANSWER TO CROSS-CLAIMS OF FOURTH-PARTY DEFENDANT
U.S. FIRE INSURANCE COMPANY

National Union denies the first and second cross-claims asserted by Fourth Party Defendant U.S. Fire Insurance Company in their entirety and, to the extent applicable, incorporates the foregoing affirmative defenses by reference.

ANSWER TO CROSS-CLAIMS OF FOURTH-PARTY DEFENDANT
ZURICH-AMERICAN INSURANCE COMPANY

National Union denies the first cross-claim asserted by Fourth Party Defendant Zurich-American Insurance Company in its entirety and, to the extent applicable, incorporates the foregoing affirmative defenses by reference.

ANSWER TO ALL OTHER CROSS-CLAIMS

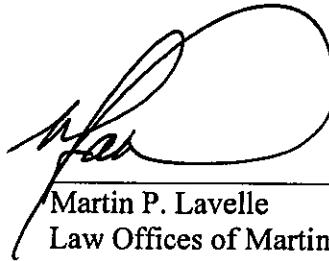
National Union denies all other cross-claims asserted against it and, except as may be inconsistent with the foregoing, denies each and every allegation in support thereof, and, to the extent applicable, incorporates the foregoing affirmative defenses by reference.

WHEREFORE, National Union seeks judgment dismissing the Fourth Party Complaint against it with prejudice, along with such other and further relief as this Court deems just and proper.

JURY DEMAND

National Union demands a trial by jury as to any issues so triable.

New York, New York
May 4, 2005



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